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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 41078
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2012-15562
v.)	
)	
CULLEN ROBERT SIMS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

COPY

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

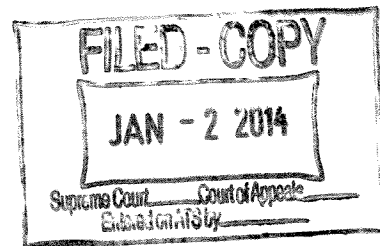
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STATEMENT OF THE CASE

Nature of the Case

Cullen Robert Sims timely appeals from two orders denying Mr. Sims' motions credit for time served. On appeal, Mr. Sims argues that the district court erred when it denied him credit for time served. Mr. Sims argues that he provided the district court with enough information to substantiate his claim that he was taken into custody for the charges in this matter prior to the date he was formally arrested. Additionally, Mr. Sims argues that I.C. § 18-309 is mandatory and requires a district court to award him pre-judgment credit for time served from the date he was taken into physical custody, as opposed to the date he was served with an arrest warrant.

Statement of the Facts and Course of Proceedings

On August 9, 2012, police observed Mr. Sims driving a car and attempted to stop him in order to serve him with an arrest warrant for a parole violation. (R., p.133.) Instead of stopping his car, Mr. Sims rammed a police vehicle and drove away. (R., p.133.) Mr. Sims eventually collided with a third party, which resulted in an injury to the third party and an injury to Mr. Sims' passenger. (R., p.133.) Mr. Sims was then "taken into custody for felony eluding and his outstanding felony parole violation." (R., p.133.) After being arrested, Mr. Sims was taken to a hospital for treatment of his injuries and for a potential drug overdose. (R., p.133.)

Mr. Sims was charged, by information, with felony eluding, felony aggravated driving under the influence of alcohol (*hereinafter*, DUI), felony possession of a controlled substance, and misdemeanor resisting and obstructing law enforcement. (R., pp.65-67.) Pursuant to a plea agreement, Mr. Sims pleaded guilty to the

aggravated DUI and, in return, the State dismissed the remaining charges. (R., pp.98, 111.) Thereafter, the district court imposed a unified sentence of fifteen years, with seven and one-half years fixed. (R., pp.111-113.) This sentence was ordered to run concurrently with an unrelated case. (R., p.112; Tr., p.21, Ls.8-17) Mr. Sims timely appealed. (R., pp.118-120.)

Mr. Sims filed a motion pursuant to Rule 35(c) requesting credit for time served, which was denied by the district court. (R., pp.121-123.) Mr. Sims then filed a motion to reconsider the denial of his Rule 35(c) motion. (R., pp.125-133.) In that motion, Mr. Sims requested credit for time served in this matter from the date he was originally arrested. (R., pp.125-133.) The district court denied this motion because Mr. Sims was not served an arrest warrant in this matter until November 21, 2012. (R., pp.134-135.) The district court also concluded that Mr. Sims did not provide him with information indicating that he was placed under arrest in his matter until he was served an arrest warrant on November 21, 2012. (R., pp.134-135.) Mr. Sims filed an amended notice of appeal. (R., pp.136-139.)

ISSUE

Did the district court err when it denied Mr. Sims' motion for credit for time served?

ARGUMENT

The District Court Erred When It Denied Mr. Sims' Motion For Credit For Time Served

A. Introduction

Mr. Sims was taken into custody for the underlying offense on August 9, 2012. (R., p.133; Presentence Investigation Report (*hereinafter*, PSI), p.23.) However, the district court denied him credit for time served from the period from August 9, 2012, until November 21, 2012, because he was immediately taken to a hospital for treatment and was not served an arrest warrant for these charges until November 21, 2012. (R., pp.133-134.) Mr. Sims argues that the district court erred because the only evidence in the record indicates that he was in custody during this period of time. Additionally, credit for time served is awarded pursuant to I.C. § 18-309 based on the date a defendant is physically taken into custody. Finally, the fact that Mr. Sims was taken to a hospital is irrelevant because he was in custody during his stay in the hospital.

B. Standard Of Review

When an appellant challenges a district court's factual findings on appeal, the appellant has the burden to establish that the factual findings are clearly erroneous. *State v. Kinser*, 141 Idaho 557, 560 (Ct. App. 2005). "Findings are clearly erroneous only when unsupported by substantial and competent evidence." *Id.* The interpretation of a statute is a question of law over which Idaho appellate courts exercise free review. *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 139 Idaho 65, 69 (2003).

C. The District Court Erred When It Denied Mr. Sims' Motion For Credit For Time Served

Idaho Code section 18-309 controls Mr. Sims' request for credit for pre-judgment time served. That section states:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

I.C. § 18-309. "[T]he provisions of I.C. § 18-309 are mandatory and do not confer upon the trial court discretion to disallow credit on a sentence." *State v. Albertson*, 135 Idaho 723, 726 (Ct. App. 2001). The district court accurately ruled (R., pp.134-135), credit for pre-judgment incarceration is awarded only if "such incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309. However, Mr. Sims should receive credit for time served from the date of his arrest for the underlying offense in this matter, which was August 9, 2012. (R., p.133; PSI, p.23.) The district court denied this request partially because he was not served an arrest warrant in this matter until November 21, 2012. (R., pp.134-135.) According to the district court, there is no evidence in the record indicating that Mr. Sims was taken into custody for the underlying offense until November 21, 2012. (R., pp.133-134.)

The district court's factual finding, however, is not supported by substantial and competent evidence. The police report written by the arresting officer indicated that on August 9, 2012, Mr. Sims was "taken into custody for felony eluding and his outstanding felony parole violation." (R., p.133; PSI, p.23 (emphasis added).) Moreover, Mr. Sims was in custody at the arraignment on November 21, 2012 (R., p.17), and there is a court

order granting the State's motion to transport Mr. Sims from the Idaho State Penitentiary which was entered on November 15, 2012. (R., p.16.) Both of these facts lead to the conclusion that Mr. Sims was incarcerated prior to his arraignment in this matter. It is also important to note, that the district court completely ignored the portion of Mr. Sims' affidavits where he stated that he was in custody for the underlying offense from August 9, 2012 until he was sentenced on May 30, 2013. (R., pp.123, 128-129.) As such, all of the evidence in the record indicates that Mr. Sims was in custody for the underlying offense from August 9, 2012, until November 21, 2012, and there is nothing in the record indicating that Mr. Sims was out of custody after he was arrested for the underlying offense on August 9, 2012.

Turning to the district court's conclusion that Mr. Sims is not entitled to credit for time served pursuant to I.C. § 18-309 until he was served an arrest warrant for the offense. (R., p.135.) The district court expressly stated that the "service of the arrest warrant constitutes incarceration" (R., p.135.) When statute is interpreted on appeal it must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. *City of Sandpoint*, 139 Idaho at 69. Courts "cannot insert into statutes terms or provisions which are obviously not there." *Matter of Adoption of Chaney*, 126 Idaho 554, 558 (1995). Contrary to the district court's conclusion, there is no such requirement that a defendant be served with an arrest warrant in order to receive credit for time served pursuant to I.C. § 18-309. In fact, that statute makes no reference to an arrest warrant. I.C. § 18-309. Instead, it states that a defendant "shall receive credit in the judgment for any period of incarceration prior to entry of judgment" I.C. § 18-309 (emphasis added). The clear and plain meaning of the statute requires a district court to order

credit for pre-judgment incarceration regardless of whether the defendant has been served with an arrest warrant. If the district court's conclusion were true, then defendants who are arrested before any formal proceedings have commenced would not receive credit for pre-judgment incarceration. Such a result runs afoul the plain language of I.C. § 18-309.

Further support for Mr. Sims' position can be found in I.C. § 20-209A, which further addresses credit for time served both before and after judgment. It states:

When a person is sentenced to the custody of the board of correction, his term of confinement begins from the day of his sentence. A person who is sentenced may receive credit toward service of his sentence for time spent in physical custody pending trial or sentencing, or appeal, if that detention was in connection with the offense for which the sentence was imposed.

I.C. § 20-209A (emphasis added). This statute makes clear that pre-judgment credit for time served is calculated by the time a defendant is in actual custody, not upon the date of service of an arrest warrant.

The district court's conclusion that Mr. Sims is not afforded credit for time served during the period of time he spent in a hospital after his arrest is erroneous because Mr. Sims was in custody during his stay at the hospital. The mere fact a defendant is taken to a hospital for medical treatment after an arrest does not change the fact that the defendant is under arrest and not free to leave the hospital. In fact, Mr. Sims was accompanied by law enforcement while he was being treated. (Tr., p.20, L.25 - p.21, L.2.) Mr. Sims situation is the same as defendant that is initially deemed incompetent to stand trial and subsequently sent to a mental health facility to regain his/her competency. Such defendants are entitled to credit for time served pursuant to I.C. § 18-309 because they are in custody during their stay at a mental health facility, which is legally indistinguishable from a defendant that is initially taken to a hospital

after being arrested. Moreover, a “prisoner on work release remains ‘incarcerated’ for that time even though he is outside the physical confines of a jail or correctional facility for extended periods of time.” *Taylor v. State*, 145 Idaho 866, 869-870 (Ct. App. 2008). If a prisoner on work release is entitled to credit for time served, then a defendant who is being accompanied by police at a hospital is surely entitled to credit for time served as the hospitalized defendant enjoys significantly less freedom than the prisoner on work release.

Additionally, the district court’s conclusion that Mr. Sims is not entitled to credit for time served during the period he received medical treatment runs afoul the plain language of I.C. § 18-309. As stated above, I.C. § 18-309 requires a defendant to receive credit for time served for all the time spent in custody prior to the entry of the judgment. The district court’s determination that Mr. Sims is not entitled to credit for custodial medical treatment requires the court to add a medical exception to I.C. § 18-309, which ignores the plain meaning of I.C. § 18-309 by inserting surplusage that is obviously not in the statute.

The State might argue that Mr. Sims pre-judgment incarceration is actually attributable to the service of the arrest warrant for the parole violation in Ada County Case CR 2009-2073. However, that argument is runs afoul the applicable legal authority. In *State v. McCarthy*, 145 Idaho 397 (Ct. App. 2008), McCarthy was on probation in the “First Case” when a report of probation violation was filed alleging that he had delivered methamphetamine to an undercover officer on two occasions. *Id.* at 398. McCarthy was arrested on a bench warrant which was served on November 9, 2005. *Id.* In the “Second Case” which arose out of the delivery of methamphetamine to the undercover officer, McCarthy was charged with two counts of delivery of a controlled

substance. *Id.* An arrest warrant for the Second Case was served on December 5, 2005. *Id.* The cases were consolidated and McCarthy remained in custody until the disposition of both cases on March 8, 2006, at which time his probation was revoked in the First Case and he was sentenced in the Second Case. *Id.*

McCarthy filed a motion for credit for time served in both cases, which was granted as to only one case. *Id.* McCarthy appealed asserting that he should receive credit for time served on both cases. *Id.*

On appeal, the State argued that McCarthy was not entitled to credit for time served because he should only receive credit in the First Case from the date of his arrest for the probation violation, November 9, 2005, until the date of the service of the arrest warrant in the Second Case, December 5, 2005. *Id.* at 398-399. In rejecting this argument, the Court of Appeals held as follows:

If a defendant is entitled to credit on all concurrent sentences for prejudgment incarceration simultaneously served in a single county on separate crimes, the same logic requires credit on both of McCarthy's sentences where his incarceration on a probation violation in the [First Case] and on a new criminal charge in the [Second Case] were based upon *precisely the same conduct* and concurrent sentences are imposed. When it is the same acts that give rise to both warrants for the defendant's arrest and the confinement is served simultaneously, it cannot be said that the incarceration is uniquely attributable to either case individually. Because concurrent sentences were imposed here, granting credit on each sentence from the date the warrant was served in that case will not give McCarthy credit against his prison sentences for more time than he actually served in the county jail. Therefore, McCarthy is entitled to credit on his possession sentence for his incarceration from November 9, 2005, the date of the service of the bench warrant, until the entry of the order revoking probation on March 8, 2006.

Id. at 399 (emphasis in original). The foregoing holding stands for the proposition that he should receive credit against the sentences in both cases because he was arrested at the same time in both cases (R., p.133), and there is no way of determining which case for which he was being incarcerated. In fact, the arresting officer indicated that

Mr. Sims was taken into custody for both this case and the unrelated matter. (R., p.133; PSI, 23.)

In sum, the district court's factual finding that Mr. Sims was not in custody for this offense, or was possibly released from custody after he received medical treatment, is not supported by substantial and competent evidence, as there is no evidence in this record indicating that Mr. Sims was ever released from custody after his initial arrest on August 9, 2012. Moreover, the district court erred when it determined that Mr. Sims was not entitled to credit from the date he was taken into custody because I.C. § 18-309 requires that credit be awarded based on the date a defendant is taken into physical custody, as opposed to the date an arrest warrant served. Additionally, the fact that Mr. Sims was initially treated for his injuries does not preclude him from receiving credit for time served as he was in custody while in the hospital and accompanied by police.

CONCLUSION

Mr. Sims respectfully requests that this vacate the district court's orders denying him credit for time served and remand this case to the district court for an order granting him proper credit for time served pursuant to I.C. § 18-309.

DATED this 2nd day of January, 2014.



SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 2nd day of January, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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ISCI
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LYNN NORTON
DISTRICT JUDGE
E-MAILED BRIEF

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